?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 12.03.2019
*CORAM

THE HON-BLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HON-BLE MRS.JUSTICE R.THARANI

+C.M.A(MD)NOs.65 of 2014
and 66 of 2014
and
M.P(MD)No.1 of 2014

C.M.A(MD)NO.65 of 2014

#The Oriental Insurance Company Limited,
represented by its Divisional Manager,
Divisional Office~I,Coimbatore,
No.4, Headquarters Road,
R.V.R Building II Floor,
:Appellant/Second Respondent

.vs.

$1.S.Ganesan

2.Minor G.Manimuthu Kumaran

3.Minor S.Sashiharran

(Minors respondents 2 and 3 are represented by their
next friend and natural guardian, the first respondent herein
Mr.S.Ganesan)

4.Jothi Murukesan : Respondents 1 to 4/
Petitioners 1 to 4

5.P.R.Rajendran :5th Respondent/
First Respondent

(5th respondent remained exparte before
the Lower Court)

6.The National Insurance Company Limited,
represented by its Divisional Manager,
Divisional Office~I,
L.R.N.Building, Second Floor,
Saradha College Road,
Salem ? 636 007. :sixth Respondent/
Third Respondent.

C.M.A(MD)NO.66 of 2014

The Oriental Insurance Company Limited,
represented by its Divisional Manager,
Divisional Office~I,Coimbatore,
No.4, Headquarters Road,
R.V.R Building II Floor,
:Appellant/Second Respondent

.vs.

1.Minor G.Manimuthu Kumaran

(Minors Ist Respondent represented by his
next friend, natural guardian and his father
S.Ganesan) :Ist Respondent/Petitioner

2.P.R.Rajendran : IInd Respondent/
First Respondent

(Second respondent remained ex~parte before
the Lower Court)

3.The National Insurance Company Limited,
represented by its Divisional Manager,
Divisional Office~I,
L.R.N.Building, Second Floor,
Saradha College Road,
Salem ? 636 007. :Third Respondent/
Third Respondent.

PRAYER in C.M.A(MD)No.65 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.432 of 2011, dated 29.10.2013, on the file of the Motor Accident Claims Tribunal cum District Judge, Karur.

PRAYER in C.M.A(MD)No.66 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.433 of 2011, dated 29.10.2013, on the file of the Motor Accident Claims Tribunal cum District Judge, Karur.

C.M.A(MD)No.65 of 2014:
!For Appellant :Mr.K.Bhaskaran

^For Respondents :Mr.P.Ganapathi Subramanian
1 to 4

For Respondent~5 :Set exparte

For Respondent~6 :Mr.S.Srinivasa Raghavan

C.M.A(MD)No.66 of 2014:
For Appellant :Mr.K.Bhaskaran

For Respondent~1 :Mr.P.Ganapathi Subramanian

For Respondent~2 :Set exparte

For Respondent~3 :Mr.S.Srinivasa Raghavan

:COMMON JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company challenging the award made by the Motor Accident Claims Tribunal~cum~District Judge, Karur, in M.C.O.P.Nos.432 and 433 of 2011, dated 29.10.2013.

2.The facts in brief:
On 1.5.2011,the first claimant in M.C.O.P.No.432 of 2011 namely S.Ganesan was driving his car bearing Registration No. K.A.03~MB~3632 at Salem~Namakkal N.H.7 Four Lanes Road. At that time, the bus belonging to the first respondent bearing Registration No. TN~30~AE~0333 which was also proceeding on the same direction in a rash and negligent manner, without giving proper signal, stopped and halted the bus all of a sudden. As a result of which, the car dashed behind the bus. In that process, wife of the first claimant and the mother of the claimants 2 and 3 namely Senthil Kumari sustained multiple injuries and she was taken to Kurinji Hospital, Salem and after treatment as inpatient, he lost her breath on 11.05.2011 in the said hospital itself. Alleging that the driver of the bus was responsible for the accident, the claim petition in M.C.O.P.No.432 of 2011 was filed seeking compensation of Rupees one crore and fifty laksh.

3.According to the claimants, the deceased was aged about 41 years as on the date of accident and was working as Assistant Executive Engineer in DEDC, Tamil Nadu Electricity Board, Dharmapuri and earning a sum of Rs.55,730/~ as monthly salary.
4.MC.O.P.No.433 of 2011 was filed by minor G.Manimuthu Kumaran, represented by his father S.Ganesan, claiming compensation of Rs.5 lakhs.The claimant travelled along with the deceased and sustained injuries.

5.A detailed counter was filed disputing the age,avocation, manner of accident and the liability. According to the appellant, the driver of the Car was responsible for the accident and the claim made was exorbitant and excessive.

6.Before the Tribunal, in order to prove the respective cases,

claimants examined three witnesses as P.W.1 to P.W.3 and marked Ex.P1 to ExP26 and on the side of the appellant, three witnesses were examined as R.W.1 to R.W.3 and two exhibits were marked as Ex.R1 and Ex.R2.

7.Ex.P1~certified copy of the First Information Report shows that a case was registered against the driver of the bus. Ex.P3 is the report of the Motor Vehicle Inspector, Ex.P5 is the rough sketch. Ex.P6 would reveal that a final report was filed against the driver of the bus under Section 304(A) and 338 of IPC. R.W.2~Nithiya, who was working as Motor Vehicle Inspector Grade~II at Namakkal, has deposed stating that normally 10 meters distance has to be maintained between two vehicles. If the said distance is maintained and if the vehicle proceeds ahead of the vehicle is suddenly stopped, the vehicle coming on the backside would avert any accident. R.W.1, who is the Public Relation Officer in the National Highways Authority, Salem has deposed that in both side of the road, petrol bunks are situated and one Arya Bhavan Hotel is also situated and there is a central median on the National Highways and 100 feet breadth is available on either side of the road and the heavy motor vehicles would ply on the left track of the road and light motor vehicles would ply on the right track of the road. The first claimant examined himself as P.W.1 and he narrated the manner of accident, as set out in the claim petitions.

8.The Tribunal, after analyzing the entire evidence, came to the conclusion that the driver of the bus was responsible for the accident and awarded a compensation of Rs.1,11,53,210/~ in M.C.O.P.No.432 of 2011 and Rs.87,650/~ in M.C.O.P.No.433 of 2011. Challenging the above said award made in the common judgment, the present Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company.

9.Mr.K.Bhaskaran, learned counsel for the appellant would vehemently contended that the driver of the car has driven his vehicle in a high speed and dashed behind the bus, for which, the insurer of the bus cannot be mulcted with liability. The learned counsel placing reliance on the evidence of R.W.2 would argue that the required distance of 10 metres was not maintained and hence, some percentage of negligence has to be fixed on the driver of the car.

10.Per contra, it is the submission of Mr.P.Ganapathi Subramanian, and Mr.S.Srinivasa Raghavan, learned counsel appearing for the respondents that the Tribunal, on proper appreciation of the evidence, has come to a right conclusion on the aspect of negligence, which does not warrant any interference by this Court. It is further submitted that the award of the Tribunal is just and reasonable and hence the same has to be confirmed.

11.In the case on hand, it is not in dispute that on 1.5.2011, bus belonging to the first respondent namely, P.R.Rajendran and the car belonging to the first claimant were proceeding in the north~south direction at Salem~ Namakkal N.H, Four Lane Road. Perusal of Ex.P5~Rough Sketch shows that the accident had taken place on the right track of the road. Though R.W.3 has stated that if the distance of 10 meters is maintained between the vehicles proceeding on the same direction, the accident would have been averted. This

Court is not able to accept the said contention of R.W.3 for the reason that most of the vehicles plying on the National Highways go on high speed and it would be impossible to stop the vehicle, if the vehicle proceeding on the same direction stops the vehicle without proper signal by applying sudden brake.

12.Further, it has been categorically deposed by R.W.1 that heavy Motor Vehicles have to ply on the left track of the road and light motor vehicles have to ply on the right track of the road. But in the case on hand, from the evidence of P.W.1 and Ex.P1, it is evident that the driver of the bus has driven his vehicle on the right track of the road and stopped the vehicle abruptly, without giving proper signal. Hence, in our considered opinion, the Tribunal has rightly held that the driver of the bus has caused the accident.

13.Next, with regard the quantum of compensation, it is an admitted fact that the deceased was working as Assistant Executive Engineer in Tamil Nadu Electricity Board and was drawing a salary of Rs.55,730/~p.m. Ex.P25 is the Pay Certificate of the deceased Senthilkumari, Ex.P23 and Ex.P24 are the income~tax returns submitted by the deceased Senthilkumari. Based on the above evidence, the Tribunal has rightly assessed the income of the deceased at Rs.55,730/~p.m and added 50% towards future prospects. The Apex Court in the case of National Insurance Company Limited .vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases, 680 in Paragraph 59.3, has held as follows:

--59.3 while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case, the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.--

14.In the instance case, proper addition would be 30% towards future prospects and by adding 30%, the income of the deceased the income is arrived at Rs.72,449/~p.m. After deducting 1/4th therefrom towards personal expenses of the deceased, the contribution to the family comes to Rs.54,337/~ p.m and by applying -14- multiplier as per decision in Sarla Verma-s case, the total loss of income is assessed at Rs.1,00,28,616/~ and after deducting 20% towards income~tax, the total loss of income would be Rs.73,02,893/~.The claimants are also entitled for a sum of Rs.70,000/~ towards conventional damages. Ex.P13~Medical Bills of the deceased Senthilkumari, shows that Rs.2,10,450/~ was incurred towards medical expenses. By adding all these awards, the total compensation is arrived at Rs.75,83,343/~. Hence the claimants in C.M.A.No.65 of 2014 is entitled to a compensation of Rs.75,83,343/~ with interest at the rate of 7.5% p.a from the date of claim petition till the date of realization.

15.Insofar as C.M.A(MD)No.66 of 2014 is concerned, the Tribunal after analyzing both oral and documentary evidence, awarded a sum of Rs.87,650/~ as

total compensation to the injured claimant, which in our considered opinion, seems to be a just and reasonable and hence the same is confirmed.

C.M.A(MD)No.65 of 2014

In the result, this Civil Miscellaneous Appeal is partly allowed by modifying the award amount from Rs.1,11,53,210/~ to Rs.75,83,343/~ with interest at 7.5% p.a. from the date of claim petition till the date of realization. It is represented by the learned counsel for the appellant that 50% of the award amount has already been deposited. The appellant is directed to deposit the modified award amount, less the amount already deposited, with proportionate accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant is entitled to receive a sum of Rs.15 lakhs towards his share, the second and third claimants are awarded Rs.25 lakhs each and fourth claimant is entitled to receive a sum of Rs.10,83,343/~ towards her share. The major claimants are permitted to withdraw their share with their respective proportionate interest and costs, by filing necessary application before the Tribunal. The entire share of the minor claimants shall be deposited in a nationalized Bank till they attain majority.

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In the result, this Civil Miscellaneous Appeal is dismissed confirming the award of the Tribunal and the claimant is entitled to a sum of Rs.87,650/~ as total compensation with interest at 7.5% p.a. from the date of claim petition till the date of realization. It is represented by the learned counsel for the appellant that 50% of the award amount has already been deposited. The appellant is directed to deposit the award amount, less the amount already deposited, with proportionate accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant, who was a minor, aged 15 years in the year 2011, seems to have now attained majority, is permitted to receive the award amount with interest and costs, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

To

1.The District Judge,
(Motor Accident Claims Tribunal),
Karur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.